

the project property's useful life, using a 10-percent salvage value; and

(2) The current market value of appurtenant limited access privileges or transferable limited access privileges vested in the name of the obligor, the subject vessel or their owners, provided that such privileges are utilized by or aboard the subject vessel and will be pledged as collateral for the subject FFP financing.

(b) The actual cost of a facility shall be the sum of:

(1) The total cost of the project, not including land, depreciated on a straightline basis over the Project Property's useful life, using a 10-percent salvage value;

(2) The current market value of the land that will be pledged as collateral for the subject FFP financing, provided that such land is utilized by the facility; and

(3) The net present value of the payments due under a long term lease of land or marine use rights, provided that they meet the following requirements:

(i) The project property must be located at such leased space or directly use such marine use rights;

(ii) Such lease or marine use right must have a duration the Program deems sufficient; and

(iii) The lease or marine use right must be assigned to the Program such that the Program may foreclose and transfer such lease to another party.

(c) The actual cost of a transferable limited access privilege shall be determined as follows:

(1) For financing the purchase of limited access privileges, the actual cost shall be the purchase cost.

(2) For refinancing limited access privileges, the actual cost shall be the current market value.

(d) The actual cost of any Project that includes any combination of items described in paragraphs (a), (b) or (c) of this section shall be the sum of such calculations.

§ 253.17 Insurance.

(a) All insurable collateral property and other risks shall be continuously insured so long as any balance of principal or interest on a Program loan or guarantee remains outstanding.

(b) Insurers must be acceptable to the Program.

(c) Insurance must be in such forms and amounts and against such risks the Program deems necessary to protect the United States' interest.

(d) Insurance must be endorsed to include the requirements the Program deems necessary and appropriate.

(1) Normally and as appropriate, the Program will be named as an additional insured, mortgagee, or loss payee, for the amount of its interest; any waiver of this requirement must be in writing;

(2) Cancellation will require adequate advance written notice;

(3) The Program will be adequately protected against other insureds' breaches of policy warranties, negligence, omission, etc., in the case of marine insurance, vessel seaworthiness will be required;

(4) The insured must provide coverage for any other risk or casualty the Program may require.

§ 253.18 Closing.

(a) *Approval in principle letters.* Every closing will be in strict accordance with a final approval in principle letter.

(b) *Contracts.* Promissory notes, security documents, and any other documents the Program may require will be on standard Program forms that may not be altered without Program written approval. The Program will ordinarily prepare all contracts, except certain pledges involving real property or other matters involving local law, which will be prepared by each obligor's attorney at the direction and approval of the Program.

(c) *Additional requirements.* At its discretion the Program may require services from applicant's attorneys, other contractors or agents. Real property services required from an applicant's attorney or agent may include, but are not limited to: Title search, title insurance, mortgage and other document preparation, document execution and recording, escrow and disbursement, and legal opinions and other assurances. The Program will notify the applicant in advance if any such services

§ 253.19

are required of the applicant's attorneys, contractors or other agents. Applicants are responsible for all attorney's fees, as well as those of any other private contractor. Attorneys and other contractors must be satisfactory to the Program.

(d) *Closing schedules.* The Program will not be liable for adverse interest-rate fluctuations, loss of commitments, or other consequences of an inability by any of the parties to meet the closing schedule.

§ 253.19 Dual-use CCF.

The Program may require the pledge of a CCF account or annual deposits of some portion of the project property's net income into a dual-use CCF. A dual-use CCF provides the normal CCF tax-deferral benefits, but also gives the Program control of CCF withdrawals, recourse against CCF deposits, ensures an emergency refurbishing reserve (tax-deferred) for project property, and provides additional collateral.

§ 253.20 Fees.

(a) *Application fee.* See §§ 253.10 and 253.12(b).

(b) *Guarantee fee.* For existing Guaranteed Loans, an annual guarantee fee will be due in advance and will be based on the guaranteed note's repayment provisions for the prospective year. The first annual guarantee fee is due at guarantee closing. Each subsequent guarantee fee is due and payable on the guarantee closing's anniversary date. Each is fully earned when due, and shall not subsequently be refunded for any reason.

(c) *Refinancing or assumption fee.* The Program will assess a fee of one quarter of one (1) percent of the note to be refinanced or assumed. This fee is due upon application for refinancing or assumption of a guaranteed or direct loan. Upon submission, the fee shall be non-refundable. The Program may waive a refinancing or assumption fee's payment when the refinancing or assumption's primary purpose will benefit the United States.

(d) *Where payable.* Fees are payable by check to "U.S. Department of Commerce/NOAA." Other than those collected at application or closing, fees are payable by mailing checks to the

50 CFR Ch. II (10–1–12 Edition)

"U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service," to such address as the Program may designate. To ensure proper crediting, each check should include the official case number the Program assigns.

§ 253.21 Demand by guaranteed noteholder and payment.

Every demand by the guaranteed noteholder must be delivered in writing to the Program and must include the noteholder's certified record of the date and amount of each payment made on the guaranteed note and the manner of its application. The only period during which a guaranteed noteholder can make demand for a payment default begins on the thirty-first day of the payment default and continues through the ninetieth day of a payment default. The noteholder must possess evidence of the demand's timely delivery.

§ 253.22 Program operating guidelines.

The Program may issue policy and administrative guidelines, as the need arises.

§ 253.23 Default and liquidation.

Upon default under the terms of any note, guarantee, security agreement, mortgage, or other security document the Program shall take remedial actions including, but not limited to, where appropriate, retaking or arrest of collateral, foreclosure, restructuring, debarment, referral for debt collection, or liquidation as it deems best able to protect the U.S. Government's interest.

§ 253.24 Enforcement violations and adverse actions.

(a) *Compliance with applicable law.* All applicants and Program participants shall comply with applicable law.

(b) *Applicant disqualification.* (1) Any issuance of any citation or Notice of Violation and Assessment by NMFS enforcement or other enforcement authority may constitute grounds for the Program to:

- (i) Delay application or approval processing;
- (ii) Delay loan closing;